

ORDINANCE No. 104

AN ORDINANCE PROVIDING A STATEMENT OF POLICY IN ACCORDANCE WITH Chapter 822 OF THE TEXAS HEALTH & SAFETY CODE, PROVIDING DEFINITIONS; DECLARING THE ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, AND OTHER UNWHOLESOME MATTER ON PROPERTY TO BE UNLAWFUL; DECLARING SPECIFIED ACTIONS AND CONDITIONS A NUISANCE; PROVIDING FOR THE ABATEMENT OF NUISANCES; DECLARING THE DISCHARGE OF SEWAGE IN A UNWHOLESOME CONDITIONS A VIOLATION; PROVIDING FOR THE FILING OF LIENS; PROVIDING A PENALTY AND SAVINGS CLAUSE; REPEALING CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR OTHER MATTERS.

WHEREAS, the accumulation of litter, solid waste, garbage, trash and vegetative overgrowth impair the quality of life and are injurious to the prospects for economic development of our community; and

WHEREAS, standing and stagnant water, the accumulation of solid waste, garbage, trash and vegetative overgrowth, together with overgrown grass, weeds and brush on lots and property, are a threat to the health of the community, create fire hazards, and otherwise detract from the quality of life in or community; and

WHEREAS, the regulation, management and control of solid waste, garbage and trash, together with stagnant water and the grown of grass, weeds and brush on property within the City of Umland, Texas are essential to the public health, safety and welfare of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF UHLAND, TEXAS THAT:

**ARTICLE 1.
POLICY AND DEFINITIONS**

Section 1.1 Finding of Fact.

The findings and recitations set out in the preamble of this Ordinance are found to be true and correct and are hereby adopted by the City Council and made part hereof for all purposes.

Section 1.2 Statement of Policy.

The terms and provisions hereof shall apply to stagnant water and to the accumulation and storage of any solid waste, including garbage and trash, and to the growth, accumulation, cutting, and storage of grass, weeds and any other vegetative material upon property in the City of Umland, Texas, to the end that property shall be maintained in a sanitary and healthful condition for the benefit of all residents of the community.

Section 1.3 Definitions

The following definitions shall apply in interpretation and enforcement of the ordinance:

- a) Brush. All uncultivated shrubs, bushes and small trees.
- b) City Administrator. Shall mean and include the chief administrative officer of the city, the city Secretary of the City, or the Mayor of the City, or their designee.
- c) Earth and Construction Materials. Earth, rocks, bricks, concrete, other similar materials and waste materials resulting from construction or remodeling.
- d) Garbage. Rubbish trash kitchen and household waste, ashes, bottles, cans, rags, paper, food containers, lawn trimming, tree trimming, hedge trimmings, leaves, grass, weeds, and refuse, and all decayable wastes, including animal and vegetable matter, but not including sewage, hazardous, toxic or corrosive materials, and earth and construction materials as herein, or any other materials which may be found to be harmful to garbage collection and handling personnel or equipment.
- e) Injure. Any and all character or physical damage, whether caused by fire or force, and which shall be done or caused willfully by any person.
- f) Junk. All worn out, worthless and discarded material, in general, including, but not limited to, odds and ends, old iron or other material, glass, paper, cordage or other waste or discarded materials.
- g) Lot. In addition to land within the boundaries of the property lines, all land adjacent to and extending beyond the property lines of any lot or parcel of land to the curblines or adjacent streets where curblines have been established or, where no curblines have been established, to eight (8) feet beyond that property lines.
- h) Refuse. See "garbage."
- i) Rubbish. All refuse, old vessels of all sorts, useless articles, abandoned pipe, discarded clothing and textiles of all sorts, and in general all litter. The words "any and all objectionable or unsanitary matters," not included the meaning of the other terms as herein used, mean those which are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to general locality where the same are situated.
- j) Solid waste. Household garbage and refuse and commercial garbage and refuse, brush cutting and weeds.
- k) Trash. See "garbage,"

- l) Unwholesome Matter. All stagnant water, filth, carrion, impure and any condition liable to produce disease.
- m) Weeds. All rank and uncultivated vegetable growth or matter which is liable to become an unwholesome or decaying mass or breeding place for flies, mosquitoes or vermin.

Section 1.4 Placing solid waste outside buildings.

It is unlawful for an owner or occupant of premises to:

- 1) Cause or permit any garbage or rubbish generated on the premises to be placed or to remain outside of a building on the premises unless it is inside a securely closed bag, bin or container.
- 2) Cause or permit any solid waste to be placed or to remain outside of a building on the premises in a manner that is likely to:
 - a. Create a harborage or breeding place for mosquitoes, flies or vermin; or
 - b. Allow the waste to be scattered or carried away by the elements.
- 3) Cause or permit hazardous, infectious, or toxic waste to remain outside of a building on the premises unless it is properly contained and arrangements have been made for lawful collection and disposal of the waste at the expenses of the owner or occupant.

Section 1.5 Enforcement.

The Mayor or the Mayor's designated representative is authorized to issue municipal court citations to enforce this chapter. Violation of this section is punishable of up to \$ 200.00 for each day the violation continues.

**ARTICLE 11
WEEDS AND OFFENSIVE
CONDITIOND ON PRIVATE PROPERTY**

Section 2.1 Prohibited Conduct.

It shall be unlawful for an owner, occupant, lessee, or renter of any lot or parcel of ground within the City to fail to keep the property free from brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever nature, or to fail to keep the sidewalks in front of property free and clear from weeds and tall grass from the line of such property to the established curblin next adjacent thereto, or to fail to fill up and drain holes and depressions in which water collects, or to regrade any lots, grounds or yards or any other property owned or controlled by the owner, occupant, lessee, or renter which shall be unwholesome or have stagnant water thereon, or which from any other cause, is in such condition as to be liable to produce disease or to fail to keep any house, building, establishment, lot, yard or ground owned or occupied or under his her control at all times free from filth, impure or unwholesome matter of any kind.

Section 2.2 Nuisance Declared: Duty to Abate.

Whenever brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever nature shall exist, covering or partially covering the surface of any lot or parcel of any real estate situated within the City or when any of said lots of parcels of real estate as aforesaid shall have the surface thereof filled or if from any other condition that the same holds or is liable to hold stagnant water therein, or if from any other cause shall be in such condition as to cause disease, or produce, harbor, or spread disease germs or any nature or tend to render the surrounding atmosphere unhealthy, unwholesome or obnoxious, or shall contain unwholesome matter of any kind or description, the same is hereby declared to constitute a public nuisance, the prompt abatement of which is hereby declared to be a public necessity. Any such nuisance shall be removed from the property by the owner or other person in possession or control of such property.

Section 2.3 Right to Inspection.

The City Administrator or their designee is authorized to inspect any property within the City, at any reasonable time, subject, however, to the restrictions against such inspection and entry of private residence for health inspection as are provided for the laws of the State of Texas and the Texas Health& safety Code, Chapter 822.

Section 2.4 Violations: Notice: Failure to Abate.

- a) In the event the officer charged with enforcement of this article shall determine that a situation exists which immediately affects the health, safety and well being of the general public and that immediate action is necessary, such officer may take such action as shall be necessary, including issuing citations for violations of the terms and provisions hereof to the owner or occupant of the property upon which such condition exists, as may be deemed appropriate and necessary.
- b) In the event the officer charged with enforcement of this article determines a situation constitutes an immediate threat to the public health, safety and welfare, and the owner or occupant of the property is absent or fails to immediately remedy the violation, the City Council may, at a regular session or at any emergency session called for the purpose of considering the issue, upon evidence heard, determine that an emergency exist and order such action as may be required to protect the public health, safety and welfare. In such event, the City may prosecute an action in any court of competent jurisdiction to recover its costs.
- c) In the event an owner or occupant shall fail to refuse to remedy any of the conditions prohibited in Section 2.1 of this Ordinance within 10 (10) days after notice to do so, the City may do such work or cause the same to be done, and pay therefore, and charge the expenses in doing or having such work done or improvement made, to the owners of the property, whereupon such charge shall be a personal liability of such owner to the City. Such notice may be in writing, served upon such owner and/or occupant in person by an officer or employee of the City, or may be by letter addressed to such owner or occupant at their post office address, or if personal service may not be had, or the owner and occupant's address be not known, then notice may be given by publishing a brief summary of such order two (2) times within ten (10) consecutive days in the official newspaper of the City addressed "Sanitary Improvements" "To Whom It May Concern," and such publication shall be deemed sufficient notice.

Section 2.5 Assessment Of City's Abatement Cost: Collection of Costs: Appeals.

In addition to the remedy provided in Section 2.4 and cumulative thereto, the City Administrator or their designee, after giving to the owner of the property ten (10) days personal notice in writing, or by notice sent by certified United States Mail addressed to such owner at his or her post office address, or by publication two (2) times within ten (10) consecutive days in the official newspaper of the City, if the owner's address or whereabouts be not known, may cause any of the work or improvement mentioned in Section 2.1, and 2.4 to be done at the expense of the City, on the account of the owner of the property on which such work or improvement are done, and cause all of the actual cost to the

City to be assessed on the real estate or lot on account of which such expense occurred; provide, that the owner of any such real estate may appeal to the City Council from the order of the City Administrator by filing a written statement with the City Administrator within (10) days after receipt of the notice provided for above, stating that such real estate complied with the provision of Section 2.1 before the expiration of a ten (10) day period. The City Council shall set a date, within thirty (30) days from the date of the appeal, for hearing upon such appeal to determine whether the real estate complied with the provisions of Section 2.1 before the expiration of such ten (10) day period. The authority of the City Administrator to proceed to cause such work to be done shall not be suspended while an appeal from the order is pending, but if it shall be determined by the City Council that the premises complied with the provisions of Section 2.1 before the expiration of such ten (10) day period then no personal liability of the owner shall arise nor shall any lien be created against the premises upon which such work was done.

Section 2.6 Cost of City Abatement Constitutes Lien.

Cumulative of the City's remedy by fine, as set forth in this document, the City may do such work or cause the same to be done to remedy condition to remove such matter from such owner's premises at the City's expense and may charge the same to the account of the owners of such property and assess the same against the real estate or lot or lots upon which such expense is incurred. Upon filing with the County clerk of Hays County, Texas, of a statement by the City Administrator or their designee of such expenses, the City shall have a privileged lien upon said real estate or lot or lots, second only to tax liens and liens for street improvements, to secure the expenditure so made and ten (10) percent interest in the amount from the date of such payment so made by the City. The City may institute suit and recover such expenses and foreclose such lien in any court of competent jurisdiction, and the statement so filed with the County or a certified copy thereof shall be prima facie proof of the amount expended in any such work or improvement to remedy any condition or remove any matter.

Section 2.7 Limitation on Height of Grass and Weeds.

It shall be unlawful for any person who shall own or occupy any lot or lots in the City to allow weeds and /or grass to grow on such lot or lots to a height of no more than twelve (12) inches. Weeds, and/or grass of a height exceeding twelve (12) inches are declared a nuisance. Provided, however, this section shall not apply to property used for the growing of agricultural crops or grass if such property has not been platted into lots.

Section 2.8. Discharge of Sewage.

Any person or persons who shall allow to permit sewage to discharge into the ground or subsurface soil, which shall have the effect of causing orders, obnoxious, unhealthy and unwholesome conditions to exist, is declared to have caused a public nuisance and shall be in violation of this article.

ARTICLE 111
GENERAL PROVISIONS

Section 3.1 Penalties.

Any person convicted of violating any term or provision of this Ordinance shall be fined not less than \$25.00 no more than \$2000.00 for such offense and each day that such offense is maintained shall be a separate offense.

Section 3.2 Severability.

If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or set of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion be inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 3.3 Effective date.

This ordinance upon final passage shall be published in the City of Umland's official newspaper as required by law and shall become effective upon the date of last publication.

Section 3.4 Repeal of Conflicting Ordinances.

All ordinances and parts in conflict herewith shall be and are hereby repealed as the effective date of this ordinance, save and except that any repealed

ordinance or provision shall remain in full force and effect with respect of any notice given, complaint filed or charge levied prior to the effective date of this ordinance.

Sec. 3.5 Compliance with Open Meetings Act.

That it is hereby officially found and determined that the meeting which this Ordinance was passed was open to the public as required by law and that the public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

PASSED AND APPROVED on this the 21 day of July 2010.

Daniel R. Heideman
Mayor: Daniel Heideman

Karen Gallaher
City Secretary: Karen Gallaher

Ayes 3 Nays 0